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**Submitted to the House Subcommittee on the Constitution,**  
**Committee on the Judiciary**  
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**Oversight Hearing on**  
**“The Implementation of the Crime Victims’ Rights Provisions of the**  
**Justice for All Act”**

Good afternoon, Mr. Chairman, Ranking Member Nadler, and other members of the Committee. Thank you for providing me the opportunity to testify today. My name is Julie Goldscheid. I am an Associate Professor at CUNY Law School, the only public law school in New York City and one of the most diverse law schools in the country. CUNY Law School was founded in 1985 with the mission of training public interest lawyers, and graduates twice as many public interest lawyers as any law school in the country. The views expressed here are my own, and not the views of the law school. They are grounded in my experiences working on behalf of the rights of victims of crime, primarily victims of domestic and sexual violence. Before joining the CUNY Law School faculty, I served as General Counsel of Safe Horizon, the nation’s leading victim assistance and advocacy organization, and as a senior staff attorney at Legal Momentum, formerly NOW Legal Defense and Education Fund, where I headed the organization’s litigation, legislative and advocacy efforts to end violence against women. I have represented victims of domestic or sexual violence in civil proceedings, including cases brought under the civil rights remedy of the 1994 Violence Against Women Act, which I argued before the U.S. Supreme Court in *United States v. Morrison*, 529 U.S. 598 (2000).

My testimony today concerns Title I of the Justice for All Act of 2004,<sup>1</sup> which addresses Crime Victims’ Rights (“2004 Crime Victims’ Rights Act” or the “Act”).<sup>2</sup> I commend Congress, and this Committee, for your attention to crime victims’ needs and your efforts to ensure that crime victims’ concerns are appropriately taken into account as part of criminal justice proceedings. The 2004 Crime Victims’ Rights Act makes useful steps towards ensuring victims appropriate protection, notice, and participation in the criminal proceedings of their accused. It supplements previously existing laws. However, the Act does not address, nor was it designed to address, the greatest needs of the vast majority of victims of crime – the need for services such as counseling, shelter, and assistance in addressing the range of legal issues they may confront, and for enforcement of existing laws and full appropriation of already-authorized expenditures.

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<sup>1</sup> Pub. L. 108-405, 118 Stat. 2260 (Oct. 30, 2004).

<sup>2</sup> Title I of the Justice for All Act is the Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis and Nila Lynn Crime Victims’ Rights Act, codified at 18 U.S.C. § 3771 (2006).

## **2004 Crime Victims' Rights Act**

The 2004 Crime Victims' Rights Act grants victims of federal crimes a spectrum of rights and clarifies that those rights are enforceable in federal court. The rights include the right to be reasonably protected from the accused; to reasonable, accurate and timely notice of proceedings related to the crime, including public court proceedings, parole, release, plea or sentencing; the right not to be excluded from such proceedings unless the court determines that the victim's testimony would be materially altered as a result; the right to confer with the Government's attorney; the right to full and timely restitution; the right to proceedings free from unreasonable delay; and the right to be "treated with fairness" and "with respect for the victim's dignity and privacy."<sup>3</sup> The Act funds legal services to assist victims in enforcing those enumerated rights.<sup>4</sup> The Act also strengthens notification systems to improve the likelihood that victims will be alerted, for example, of upcoming criminal proceedings or of a defendant's imminent release from custody.<sup>5</sup>

These provisions are important and may help victims in their recovery from the economic and psychological harms that crime often produces. For example, in one case the 2004 Victims Rights Act enabled victims who were potential witnesses to be present at trial in a case involving the murder of the victims' family members.<sup>6</sup> In another, the new law enabled the court, *sua sponte*, to give victims of an alleged mail fraud scheme notice of hearings that had taken place without their knowledge.<sup>7</sup> In yet another, the estate of a three-year-old-girl killed by a man who was found guilty of and subsequently pled guilty to voluntary manslaughter was awarded over \$300,000 in restitution for the infant's prospective lost wages.<sup>8</sup> The improved notification systems authorized by the Act can go a long way towards allaying victims' concerns that they will not be prepared for a perpetrator's release from custody, and may enable them to make arrangements to participate in proceedings if that is their desire.

Some of the provisions, however, fall short of meeting many victims' needs, particularly those who have fewer financial resources. For example, the Act authorizes victims' participation in criminal proceedings, but does not make any provisions to ensure that they are granted time off from work without adverse consequences. Currently, many states have provisions that encourage employers to facilitate employees' participation in criminal proceedings in which the employee has been a victim.<sup>9</sup> However, in most of these states, employers are only encouraged, not required, to grant this type of employment leave.<sup>10</sup> Even where leave is granted, in most states it is unpaid, and in many states it is limited to a particular number of days, or for attendance at particular

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<sup>3</sup> Pub. L. 108-405, 118 Stat. 2260, at Sec. 102(a), codified at 18 U.S.C. § 3771(a)(1) – (4) (2006). These rights are made enforceable through 18 U.S.C. § 3771(d) (2006).

<sup>4</sup> Pub. L. 108-405, 118 Stat. 2260, at §103(a), codified at 42 U.S.C. § 10603d (2006).

<sup>5</sup> Pub. L. 108-405, 118 Stat. 2260, at §103(c), codified at 42 U.S.C. § 10603e (2006).

<sup>6</sup> *United States v. Johnson*, 362 F. Supp. 2d 1043 (N.D. Iowa 2005).

<sup>7</sup> *United States v. Turner*, 367 F. Supp. 2d 319 (E.D.N.Y. 2005).

<sup>8</sup> *United States v. Serawop*, 409 F. Supp. 2d 1356 (D. Utah 2006).

<sup>9</sup> See generally, Legal Momentum, *State Law Guide, Time Off from Work for Victims of Domestic or Sexual Violence*, available at <http://www.legalmomentum.org/issues/vio/timeoff.pdf>.

<sup>10</sup> *Id.*

types of proceedings.<sup>11</sup> Absent assurances that victims can attend criminal proceedings without facing adverse consequences at their jobs, the right granted in the 2004 Act may not prove useful to the many victims who cannot afford to put their jobs, or their incomes, in jeopardy.

Other victims may not be able to avail themselves of the Act's provisions because they lack the resources to travel to a court proceeding. Victims who reside in other states, or other countries, now have a right to participate in hearings or other proceedings, but the Act provides no funding to support their travel if they lack adequate resources to pay for the trip on their own.

### **Appropriations and enforcement of other federal laws**

Perhaps more important to those concerned with victims' rights is the Act's limited scope. Since most crimes are prosecuted in state, not federal court,<sup>12</sup> only a limited number of victims can avail themselves of the Act. For the vast majority of crime victims, other provisions of federal law, such as those contained in the Violence Against Women Act, and the Victims of Crime Act, hold greater potential to help them recover from the crime and live safely. Those laws should be fully funded and efforts should be made to ensure their full enforcement.

### **VAWA 2005 should be fully funded**

Many victims of crime are victims of domestic or sexual violence. In January 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("2005 VAWA Reauthorization" or 2005 Reauthorization").<sup>13</sup> This reauthorization of the law originally enacted in 1994 renewed many critical programs, such as services for domestic violence victims and programs to improve law enforcement responses, as well as funding for legal services to enable domestic violence victims to obtain protection from an abuser. In addition, it authorized many important new initiatives. For example, among the Act's many provisions, the 2005 Reauthorization for the first time funds direct services programs for victims of sexual assault.<sup>14</sup> It also authorizes programs that would assist young victims of violence,<sup>15</sup> prevention and awareness campaigns directed at the general public,<sup>16</sup> and initiatives to train health professionals, who frequently are in the position of being the first professionals to learn of abuse.<sup>17</sup> The bill protects domestic violence victims from being evicted from public housing and from losing housing subsidies as a result of the criminal acts of their abusers.<sup>18</sup> It aspires to advance victims' economic security by

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<sup>11</sup> *Id.*

<sup>12</sup> *See, e.g., United States v. Morrison*, 529 U.S. 598, 618 (2000) ("The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States . . . Indeed, we can think of no better example of the police power, . . . than the suppression of violent crime and the vindication of its victims.").

<sup>13</sup> Pub. L. 109-162, 119 Stat. 2960 (Jan. 5, 2006).

<sup>14</sup> *See* 2005 VAWA Reauthorization, tit. II, Pub. L. 109-162, 119 Stat. 2960, §§ 201-206.

<sup>15</sup> *See* 2005 VAWA Reauthorization, tit. III, Pub. L. 109-162, 119 Stat. 2960, §§ 301-306.

<sup>16</sup> *See* 2005 VAWA Reauthorization, tit. IV, Pub. L. 109-162, 119 Stat. 2960, §§ 401-402.

<sup>17</sup> *See* 2005 VAWA Reauthorization, tit. V, Pub. L. 109-162, 119 Stat. 2960, §§ 501-505.

<sup>18</sup> *See* 2005 VAWA Reauthorization, tit. VI, Pub. L. 109-162, 119 Stat. 2960, §§ 601-602.

establishing a national resource center on workplace responses to domestic and sexual violence.<sup>19</sup> Importantly, it improves legal protections for victims of trafficking,<sup>20</sup> and directs resources to domestic violence within the Native American community.<sup>21</sup> Other provisions target services to historically underserved communities and aim to enhance culturally and linguistically specific services for victims.<sup>22</sup>

Currently, however, many of these important programs are at risk because funding for them may not be appropriated. As it stands, President Bush's proposed budget for fiscal year 2007 does not include any funding for the important new programs Congress authorized. Even as authorized, the funding levels for many programs fell short of what advocates had determined was needed. Absent full funding, the promise represented by the 2005 VAWA Reauthorization will ring hollow for the countless victims of domestic and sexual violence who otherwise might have been reached.

#### The VOCA reserve fund should be preserved

Another federal law that is critical to victims of crime is the Victims of Crime Act (VOCA).<sup>23</sup> VOCA established a Fund comprised of defendant fines and fees in federal prosecutions, which is used to support victim assistance and compensation programs nationwide. Since 2000, Congress has limited how much of the Fund can be distributed to the states each year in order to leave a balance in the Fund for years when fewer fines and fees were collected.<sup>24</sup> Last year, the President unsuccessfully recommended depleting that reserve and using it for other budgetary items. He has made the same proposal this year. If enacted, the President's budget would take the over \$1 billion in fines and fees collected for the purpose of funding victim assistance and compensation programs away from those needed programs. This would mean that in 2008 there would be no VOCA funding left in the reserve for years in which fines and fees collected were inadequate to fund programmatic needs.

Funding from the VOCA account supports many of the personnel charged with implementing the 2004 Crime Victims' Rights Act, including U.S. Attorney victim/witness coordinators, who, among other things, implement the federal victim notification system. VOCA funds also support the crime victim compensation programs that reimburse crime victims for their financial losses resulting from crime, and the assistance programs that offer counseling and support, and help for victims navigating the criminal justice and other benefits programs to help them recover from the crime. These programs are vital to crime victims. Many advocates support removing the caps on VOCA funds

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<sup>19</sup> See 2005 VAWA Reauthorization, tit. VII, Pub. L. 109-162, 119 Stat. 2960, § 701.

<sup>20</sup> See 2005 VAWA Reauthorization, tit. VIII, Pub. L. 109-162, 119 Stat. 2960, §§ 801-834.

<sup>21</sup> See 2005 VAWA Reauthorization, tit. VII, Pub. L. 109-162, 119 Stat. 2960, §§ 901-909.

<sup>22</sup> See 2005 VAWA Reauthorization, tit. VII, Pub. L. 109-162, 119 Stat. 2960, §§ 120, 121.

<sup>23</sup> 42 U.S.C. § 10601 et seq. (2000).

<sup>24</sup> In 2006, Congress limited the amount that could be disbursed to \$625 million. Congress has established these caps despite Administration projections that because of lower deposits, amounts kept in reserve in the fund would be needed to meet VOCA commitments during fiscal years 2006 and 2007. See National Association of VOCA Assistance Administrators, *Victim of Crime Act's (VOCA) Crime Victims Fund*, available at <http://www.navaa.org/07/docs/VOCA%202007.pdf>.

entirely, to enable the states to manage the fluctuations in resources as they see fit. However, even if Congress insists on maintaining the caps on disbursements, it should ensure that all the amounts collected to assist crime victims actually goes to the services for which they have been collected.

### **Victim services programs require comprehensive, coordinated funding and full enforcement**

As this Committee, and Congress as a whole, considers a federal statute that aims to assist victims of crime, it should consider the full range of victims' needs and should ensure that all aspects of services are adequately funded. For example, the 2004 Act dramatically increases notification obligations, but does not ensure the allocation of personnel resources to meet those requirements. Current funding for such functions draw on VOCA funds; however, if overall disbursements are limited, increasing funding for compliance with the 2004 Act could jeopardize funding for the ongoing and critical state programs for which there is no other source of support. Congress should ensure that the ongoing state programs, which provide direct and critical services to victims, are not jeopardized by new obligations under federal law.

Beyond participation in criminal proceedings, victims often need counseling and concrete services to help them move on with their lives. Many victims, particularly victims of domestic violence, affirmatively do not want to participate in criminal proceedings and instead want assistance in living safely and in becoming economically independent from their abuser. Victims of crime often benefit from emotional support programs and assistance in recovering from the economic losses that may result from the crime. For example, one study found that in 1992 alone, crime victims lost \$17.6 million in direct costs as a result of the crime.<sup>25</sup> The 2004 Crime Victims Rights' Act does nothing to support counseling programs or interventions that help victims obtain crime victim compensation or other benefits for which they might be eligible. Victims also require legal assistance that goes beyond enforcing the rights enumerated in the 2004 Act. For domestic violence victims in particular, representation in order of protection, custody and visitation, housing and employment, and benefits proceedings is critically important and can reduce the risk of future abuse.<sup>26</sup> Legal assistance in immigration proceedings and in proceedings to enforce rights established under the U-visa and related programs also fall far short of victims' needs. Services such as shelter programs and financial support are also high priority.<sup>27</sup> Funding to ensure language proficiency in the services that are offered to victims also is critical to ensuring programmatic success. Overall, support for this wide range of programs is essential to any comprehensive approach to crime victims'

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<sup>25</sup> Patsy A. Klaus, Bureau of Justice Statistics, *The Costs of Crime to Victims*, NCJ-145865 (Feb. 1995), available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/coctv.txt>.

<sup>26</sup> See, e.g., Amy Farmer and Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 *Contemp. Econ. Pol'y* No. 2, 158-172 (2003) (analyzing government data on the incidence of domestic violence and concluding that the provision of legal services to battered women significantly lowers the incidence of domestic violence). 2005 VAWA authorizes funding for this broader range of legal services. See 2005 VAWA Reauthorization, tit. I, Pub. L. 109-162, 119 Stat. 2960, §§ 103, 104.

<sup>27</sup> See, e.g., Laura Nichols and Kathryn M. Feltey, *The Woman Is Not Always the Bad Guy*, 9 *VAW* 784 (July 2003) (survey of women living in a battered women's shelter highlight importance of shelter and assistance with financial support).

needs.

**Conclusion**

The 2004 Crime Victims Rights Act addresses some of victims' needs in certain circumstances. To most fully address the myriad of challenges crime victims face, Congress should ensure full funding and vigorous enforcement of all federal programs that provide them compensation, services and assistance.